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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group: 3627
Confirmation No.: 1918
Application No.: 09/903,001
Invention: AUDIO/VIDEO AUTOMATED
PAYMENT FACILITY
Applicant: Mark Pratt et al.
Filed: July 11, 2001
Attorney
Docket: 37837-75702
Examiner: Richard E. Chilcot

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APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
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Sir:

This Appeal Brief is submitted in triplicate for the application identified above in support of the appeal from the May 18, 2005 final rejection of claims 1-13. Appellants hereby petition for a three-month extension of time to extend the deadline for filing this brief from January 18, 2006 to April 18, 2006. In this regard, it is respectfully requested that this paper be considered as a THREE-MONTH Petition for an Extension of Time sufficient to effect a timely filing of this brief. Please charge the fee for this extension of time (\$510), along with the fee to file this Appeal Brief (\$250), to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 with reference to file 37837-75702.

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REAL PARTY IN INTEREST

The real parties in interest are the inventors Mark Pratt and David Harpold.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants that will directly affect or be directly affected by, or have a bearing on the Board's decision in the present appeal.

STATUS OF CLAIMS

Claims 1-13 were rejected in the final Office Action dated May 18, 2005 and are appealed. A copy of the appealed claims is attached hereto in a Claims Appendix.

STATUS OF AMENDMENTS

No amendment has been filed subsequent to the final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 1

Claim 1 is directed to an automated payment system for a parking facility. Such a system is used to collect payment from the drivers of vehicles exiting the parking facility (e.g., a parking garage) without the use of a live attendant located in a tollbooth at the exit of the parking facility. The system includes an exit gate (11) operable to control egress from the parking facility. The system also includes a payment terminal (20) that includes means for assessing a payment amount (paragraph [0021]) which may be exemplarily embodied as a ticket reader (28), a processor (65) for calculating a time duration and associated fee, and a display (30) for displaying the fee amount to a customer. The payment terminal also includes means for receiving the payment amount (paragraph [0022]) which may be exemplarily embodied as a credit/debit card reader (32) and/or a cash acceptor (33) along with the associated software for processing the payment. The payment terminal also includes means for opening the exit gate upon receipt of the payment amount (paragraphs [0006] and [0019]) which may exemplarily be accomplished by the processor (65) generating an instruction on the gate signal line 68 to raise

the gate (11). The automated payment system also includes means for providing two-way video and audio communication with a monitoring facility (75) remote from said payment terminal (paragraphs [0024]-[0041]). This means may be exemplarily embodied as a digital video camera (40), a monitor (42), a speaker 43, and a microphone (44) along with the associated hardware and software.

Independent Claim 5

Claim 5 is directed to an automated payment system for a plurality of parking facilities. Such a system is used to collect payment from the drivers of vehicles exiting each of the plurality of parking facilities (e.g., a parking garage) without the use of a live attendant located in a tollbooth at the exit of each of the parking facilities. The automated payment system includes a central monitoring facility (75) (FIG. 3, paragraphs [0034]-[0041]). The automated payment system also includes a plurality of exit facilities (10) remote from said central monitoring facility. Each of the exit facilities controls egress from a corresponding one of the plurality of parking facilities (paragraphs [0019]-[0023], FIG. 1). The automated payment system also includes a payment terminal (20) at each of said plurality of exit facilities (10). Each payment terminal has means for assessing and receiving payment (paragraphs [0021]-[0022]) which may be exemplarily embodied as a ticket reader (28), a processor (65) for calculating a time duration and associated fee, a display (30) for displaying the fee amount to a customer, a credit/debit card reader (32) and/or a cash acceptor (33) along with the associated software for processing the payment. The automated payment system also includes means for providing two-way video and audio communication between said central monitoring facility and said payment terminal at each of said plurality of exit facilities (paragraphs [0024]-[0041]). This means may be exemplarily embodied as (a) a digital video camera (40), a monitor (42), a speaker 43, and a microphone (44) located at the payment terminal, and (b) a PC (79), video camera (80), and a speaker/microphone system (81) located at the central monitoring facility, along with the associated hardware and software.

Independent Claim 10

Claim 10 is directed to an automated payment system for a facility. The system includes an apparatus (28, 65) for calculating a payment amount (paragraph [0021]) and an apparatus (32, 33) for receiving the payment amount (paragraph [0022]). The automated payment system also includes a gate apparatus (11) operable to control access to the facility in response to receipt of the payment amount (FIG. 1, paragraph [0006]). The automated payment system also includes a two-way video and audio communication system linking the automated payment system with a monitoring facility remote from the automated payment system (paragraphs [0024]-[0041]).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The following sole ground of rejection is presented for review: the rejection under 35 U. S. C. § 103(a) of claims 1-13 as being obvious over U. S. Patent No. 6,340,935 issued to Hall (hereinafter “Hall”) in view of U.S. Patent No. 6,032,126 issued to Kaehler (hereinafter “Kaehler”).

ARGUMENT

I. The Board Is Urged to Reverse the Sole Ground of Rejection.

A. A Prima Facie Case Obviousness Has Not Been Established in Regard to Claim 1

A prima facie case of obviousness has not been established in regard to claim 1 since the combination of Hall and Kaehler does not arrive at the invention of claim 1, nor has the Examiner put forth a legally sufficient teaching, motivation, or suggestion for combining Hall with Kaehler.

The proposed combination of Hall and Kaehler does not arrive at the invention of claim 1 since it does not include each and every limitation of claim 1. This is true since, amongst other things, the proposed combination does not include an automated payment system that includes a payment terminal that assesses a payment amount, receives the payment amount, and opens an exit gate upon receipt of the payment amount. Hall is directed largely to systems for tracking vehicles and vehicle locations within a garage in which access to the garage is controlled

by use of access cards. Although a limited discussion of “charge-for-parking” facilities is present in Hall (e.g., the electronic parking meters), such a discussion does not disclose a payment terminal having the above-identified features. Kaehler is directed to automated fuel dispensers, and does not cure the deficiencies of Hall when combined therewith.

The Examiner has put forth a list of many features and functions of the system of Hall in both the 9/9/04 Office Action and the 5/18/05 Office Action (see, e.g., last partial paragraph of page 2 through first partial paragraph of page 3). The Examiner indicated that “Hall teaches all the elements of the claimed invention.” Because many, if not most, of such features and functions identified in the Examiner’s list appeared to be irrelevant to the claimed invention, in their response to the 9/9/04 Office Action, Appellants requested that the Examiner identify how such features or functions read on the specific limitations of claim 1. In response, the Examiner indicated in the 5/18/05 Office Action that he was “of another opinion” and that “Applicant’s arbitrary dismissal of the “charge for parking” section fails to adequately address such a teaching in Hall.” In other words, despite this request from Appellants, the Examiner has still not put forth a reasoned explanation as to where the Hall/Kaehler combination discloses each of the claimed elements. To the contrary, the 5/18/05 final Office Action includes only the same laundry list of features and functions of Hall, most of which appear to be completely unrelated to the issues at hand. The initial burden for establishing that a proposed combination includes all of the elements is on the Examiner, and, in the absence of such, a prima facie case of obviousness cannot be established.

Even if the proposed combination of Hall and Kaehler could be shown to arrive at the invention of claim 1, a notion that Appellants disagree with, there is no legally sufficient teaching, suggestion, or motivation to combine such references. The rule of law for a finding of obviousness under 35 U.S.C. § 103(a) was reiterated recently by the Court of Appeals for the Federal Circuit as follows, “[w]hen patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness.” *In re Lee*, 277 F.3d 1338 at 1343, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002); See also *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339 at 1351-52, 60 USPQ2d 1001 (Fed. Cir. 2001)

(“the central question is whether there is reason to combine [the] references,” a question of fact drawing on the Graham factors). The Federal Circuit expounded upon the necessity of finding some teaching or motivation to combine the references in the references themselves concluding that “[t]he factual inquiry whether to combine references must be thorough and searching.” In re Lee, 61 U.S.P.Q.2d at 1433 (Fed. Cir. 2002). The teaching or suggestion to make the claimed combination must be found in the prior art, and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. “To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.” Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985).

In an apparent attempt to establish a case of obviousness based on these references, the Examiner stated that:

“The motivation for the change would have been permitting the customer to initiate and complete an extended transaction from one location, yielding added convenience to the customer. Likewise, the change offers enhanced marketing and sales without hindering traffic flow.” (see 9/9/04 Office Action, page 4, lines 1-4 and 5/18/05 Office Action, page 3, last line through page 4, first three lines).

This is insufficient for a number of reasons. ***Firstly, for a teaching, motivation, or suggestion to be proper it must come from the prior art.*** In this regard, the Examiner has not identified where the prior art identifies the purported motivation to incorporate the two-way audio/video system of Kaehler with the system of Hall. The mere fact that Kaehler teaches a two-way audio/video system is not, *ipso facto*, motivation to modify every electronic system to include such a feature, let alone the specific system of Hall. The legally required standard is not merely whether or not the structure can be found in the prior art, but rather the standard is whether or not the prior art includes ***both*** the structure ***and*** a legally sufficient teaching, motivation, or suggestion for making the combination. In this case, the Examiner has put forth a rejection that identifies a prior art structure (i.e., the two-way audio/video system of Kaehler), but has not identified any passage or recitation in Hall, Kaehler, or any other prior art of record where the teaching,

motivation, or suggestion exists to combine Hall with Kaehler. In fact, the Examiner acknowledges that he is required to do so in the fourth paragraph of the RESPONSE TO ARGUMENTS on page 4, lines 13-19 of the 5/18/05 Office Action where he cites authority for the notion that his motivation must come from the prior art. This statement by the Examiner was in response to Appellants request that the Examiner identify where the prior art provided his purported teaching, motivation, or suggestion. *The problem is, despite acknowledging that his motivation for combining the references must come from the prior art, the Examiner still completely failed to do so. In other words, the Examiner put forth a legal standard by which he is bound, but then completely failed to apply the standard to the current rejection based on the Hall/Kaehler combination.* Based on the Examiner's own legal authority, the motivation purported by the Examiner is not legally proper.

In addition, the unsupported, conclusory statements offered by the Examiner (e.g., "permitting the customer to initiate and complete a extended transaction...", "yielding added convenience"... , "enhanced marketing and sales") cannot function as a suitable substitution of the legally required factual analysis. Indeed, even if armed with any one or more of the general notions of "permitting the customer to initiate and complete a extended transaction...", "yielding added convenience"... , or "enhance[ing] marketing and sales", one skilled in the art would not be led to the very specific combination of Hall and Kaehler purported by the Examiner, and the mere statement of such on the record cannot function as a legally sufficient substitute for the required factual analysis clarified and confirmed in *Lee*. It is the Examiner's burden to point to such motivation, and the Examiner has not done so.

Furthermore, not only has the Examiner not established where the prior art supports his proposed motivation to combine Hall and Kaehler, the motivation itself is insufficient **since it is completely contrary to the teaching of Hall**. Indeed, the Examiner asserts that the motivation would permit "the customer to initiate and complete an extended transaction." However, a careful reading of Hall does not identify a need for such capability *since the customer does not perform any transaction that could even remotely be construed as "extended", to the extent such a term is even understood*. In particular, the system of Hall generally does not interact with the customer, but rather primarily interacts with the garage

manager. For example, the customer is “interacted with” by the system of Hall when (i) the system displays information relating to available parking spaces by use of the overhead displays 50, or (ii) when the customer swipes his or her parking card to gain access to the garage. Neither of these, nor any other interactions with the customer discussed in Hall, could be reasonably construed as an “extended transaction.” As such, one skilled in the art would clearly not be motivated to go to the relatively high expense and effort to incorporate the two-way audio/video link of Kaehler into the system of Hall to permit the customer to initiate “extended transactions” since such transactions are not even contemplated by the system of Hall. *In other words, no one skilled in the art would spend the literally tens of thousands of dollars to incorporate two-way audio/video capability for the purpose of performing “extended transactions” in a system that does not perform or require extended transactions in the first place.* This simply makes no sense.

Because the Examiner has not offered a legally sufficient teaching, motivation, or suggestion to combine Hall with Kaehler, and in light of the reasons against such a combination, it appears that the Examiner is using the Appellant’s application as a roadmap in developing his rejection. That is, the Examiner appears to be using hindsight reconstruction as a substitute for a factual basis for the rejection of the claims under 35 U.S.C. §103. Such use of hindsight reconstruction is not proper. “There must be a reason apparent at the time the invention was made to a person of ordinary skill in the art for applying the teaching at hand, or the use of the teaching as evidence of obviousness will entail prohibited hindsight.” *In re Nomiya, Kohisa, and Matsumura*, 509 F.2d 566, 184 USPQ 607 (CCPA 1975). “The Patent Office has the initial duty of supplying a factually basis for a rejection under 35 U.S.C. § 103. It may not, because it may doubt that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis.” *In re Rice*, 481 F.2d 1316, 178 USPQ 478, 479 (CCPA 1973).

Based on the above, the Examiner has not established a prima facie case of obviousness with regard to Appellants’ claim 1. As such, the rejection of claim 1 should be overturned.

B. A Prima Facie Case Obviousness Has Not Been Established in Regard to Claim 2

A prima facie case of obviousness has not been established in regard to claim 2 since the Examiner has not shown how the combination of Hall and Kaehler arrives at the invention of claim 2. Indeed, the record is completely devoid of any assertion by the Examiner as to where the proposed combination teaches a means for providing two-way video and audio communication that includes an Ethernet or Internet link between the payment terminal and the monitoring facility. By the Examiner's own admission, Hall does not teach using video and audio two-way communication. In formulating his rejection, he relies on Kaehler to overcome such a deficiency in Hall. However, Kaehler does not disclose the use of two-way video and audio communication that includes an Ethernet or Internet link. In other words, neither reference alone or in combination teaches such a feature. Because of this, the Examiner has not established a prima facie case of obviousness with regard to Appellants' claim 2. As such, the rejection of claim 2 should be overturned.

C. A Prima Facie Case Obviousness Has Not Been Established in Regard to Claim 3

A prima facie case of obviousness has not been established in regard to claim 3 since the Examiner has not shown how the combination of Hall and Kaehler arrives at the invention of claim 3. Indeed, the record is completely devoid of any assertion by the Examiner as to where the proposed combination teaches a means for providing two-way video and audio communication that includes an IP-addressable video camera. By the Examiner's own admission, Hall does not teach using video and audio two-way communication, nor has he identified where Kaehler discloses the use of an IP-addressable video camera. In other words, neither reference alone or in combination teaches such a feature. Because of this, the Examiner has not established a prima facie case of obviousness with regard to Appellants' claim 3, and the rejection of claim 3 should be overturned.

D. A Prima Facie Case Obviousness Has Not Been Established in Regard to Claim 4

A prima facie case of obviousness has not been established in regard to claim 4 since the Examiner has not shown how the combination of Hall and Kaehler arrives at the

invention of claim 4. The record is completely devoid of any assertion by the Examiner as to where the proposed combination teaches a data link for the remote control of the payment terminal's processor. Neither the laundry list of Hall's features provided by the Examiner, nor any portion of Kaehler identified by the Examiner, identifies such a feature. In short, neither reference alone or in combination teaches such a feature. Because of this, the Examiner has not established a prima facie case of obviousness with regard to Appellants' claim 4, and the rejection of claim 4 should be overturned.

E. A Prima Facie Case Obviousness Has Not Been Established in Regard to Claim 5

A prima facie case of obviousness has not been established in regard to claim 5 since the Examiner has not shown how the combination of Hall and Kaehler arrives at the invention of claim 5, nor has the Examiner identified a legally sufficient teaching, motivation, or suggestion for combining the references in the first place. The arguments relating to the lack of a legally sufficient teaching, motivation, or suggestion for combining Hall and Kaehler discussed above in regard to claim 1 are applicable to the rejection of claim 5 and are incorporated in their entirety into Appellants' argument relating to claim 5. Not only should the rejection of claim 5 be overturned for these reasons, but also because the Examiner has not shown how the proposed combination of Hall and Kaehler arrives at the invention of claim 5.

Indeed, the record is completely devoid of any assertion by the Examiner as to where the proposed combination teaches a plurality of exit facilities that control egress from a corresponding one of a plurality of parking facilities in combination with a payment terminal at each of the plurality of exit facilities, with each of such payment terminals having means for assessing and receiving payment. Nor does the record reflect an assertion by the Examiner as to where the proposed combination teaches two-way audio and video communication between a central monitoring facility and the payment terminal at each of the plurality of exit facilities. Not only has the Examiner not met his initial burden of establishing where such teachings exists, it is believed from a careful reading of Hall and Kaehler that no such teachings exist.

Based on the above, the Examiner has not established a prima facie case of obviousness with regard to Appellants' claim 5. As such, the rejection of claim 5 should be overturned.

F. A Prima Facie Case Obviousness Has Not Been Established in Regard to Claim 6

A prima facie case of obviousness has not been established in regard to claim 6 since the Examiner has not shown how the combination of Hall and Kaehler arrives at the invention of claim 6. Indeed, the record is completely devoid of any assertion by the Examiner as to where the proposed combination teaches a means for providing two-way video and audio communication between the central monitoring facility and the payment terminal *at each of the plurality of exit facilities* that includes an Ethernet or Internet link between the payment terminal *at each of the plurality of exit facilities* and the monitoring facility. By the Examiner's own admission, Hall does not teach using video and audio two-way communication, and Kaehler does not disclose the use of two-way video and audio communication that includes an Ethernet or Internet link, let alone a plurality of such links. In other words, neither reference alone or in combination teaches such a feature. Because of this, the Examiner has not established a prima facie case of obviousness with regard to Appellants' claim 6. As such, the rejection of claim 6 should be overturned.

G. A Prima Facie Case Obviousness Has Not Been Established in Regard to Claim 7

A prima facie case of obviousness has not been established in regard to claim 7 since the Examiner has not shown how the combination of Hall and Kaehler arrives at the invention of claim 7. Indeed, the record is completely devoid of any assertion by the Examiner as to where the proposed combination teaches a means for providing two-way video and audio communication between the central monitoring facility and the payment terminal *at each of the plurality of exit facilities* that includes an IP-addressable video camera. By the Examiner's own admission, Hall does not teach using video and audio two-way communication, nor has he identified where Kaehler discloses the use of an IP-addressable video camera, let alone a plurality of such cameras. As such, neither reference alone or in combination teaches such a

feature. Because of this, the Examiner has not established a prima facie case of obviousness with regard to Appellants' claim 7. As such, the rejection of claim 7 should be overturned.

H. A Prima Facie Case Obviousness Has Not Been Established in Regard to Claims 8 and 9

A prima facie case of obviousness has not been established in regard to claims 8 and 9 since the Examiner has not shown how the combination of Hall and Kaehler arrives at the invention of claims 8 and 9. Indeed, the record is completely devoid of any assertion by the Examiner as to where the proposed combination teaches a data link for the remote control of the processor of the payment terminal *at each of the plurality of exit facilities*, let alone a central processor for controlling each of such a plurality of processors. Neither the list of Hall's features provided by the Examiner, nor any portion of Kaehler identified by the Examiner, identifies such a feature. Because of this, the Examiner has not established a prima facie case of obviousness with regard to Appellants' claims 8 and 9. As such, the rejection of claims 8 and 9 should be overturned.

I. A Prima Facie Case Obviousness Has Not Been Established in Regard to Claims 10-13

A prima facie case of obviousness has not been established in regard to claims 10-13 since the Examiner has not identified a legally sufficient teaching, motivation, or suggestion for combining the references. The arguments relating to the lack of a legally sufficient teaching, motivation, or suggestion for combining Hall and Kaehler discussed above in regard to claim 1 are applicable to the rejection of claims 10-13 and are incorporated in their entirety into Appellants' argument relating to claims 10-13. In short, the Examiner has not identified where the prior art identifies his purported motivation for combining Hall and Kaehler, there are significant reasons why the proposed motivation is not appropriate even if found in the art, and, because of this, it appears that the rejection of claims 10-13 has been made entirely by the improper use of hindsight.

Because the Examiner has not provided a legally sufficient teaching, motivation, or suggestion for combining Hall and Kaehler, a prima facie case of obviousness has not been established and the rejection should be overturned.

II. Summary Conclusions

Accordingly, it is submitted that the 35 U. S. C. § 103 rejections of claims 1-13 are erroneous. The Board is thus urged to reverse those rejections. Such action is respectfully requested.

Respectfully submitted,

BARNES & THORNBURG LLP

A handwritten signature in black ink, appearing to read "Shawn D. Bauer", written over a horizontal line.

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CLAIMS APPENDIX



1. An automated payment system for a parking facility, comprising:
an exit gate operable to control egress from the parking facility; and
a payment terminal including;
 means for assessing a payment amount;
 means for receiving the payment amount;
 means for opening said exit gate upon receipt of the payment amount; and
 means for providing two-way video and audio communication with a monitoring facility
remote from said payment terminal.
2. The automated payment system according to claim 1, wherein said means for providing
two-way video and audio communication includes an Ethernet or Internet link between said
payment terminal and the monitoring facility.
3. The automated payment system according to claim 2, wherein said means for providing
two-way video and audio communication includes an IP-addressable video camera.
4. The automated payment system according to claim 1, further comprising:
a processor at said payment terminal operable to control said means for assessing and said
means for receiving; and
a data link between said processor and the monitoring facility to permit remote control of
said processor.
5. An automated payment system for a plurality of parking facilities comprising:
a central monitoring facility;
a plurality of exit facilities remote from said central monitoring facility, each controlling
egress from a corresponding one of the plurality of parking facilities;
a payment terminal at each of said plurality of exit facilities, each having means for
assessing and receiving payment; and
means for providing two-way video and audio communication between said central
monitoring facility and said payment terminal at each of said plurality of exit facilities.
6. The automated payment system according to claim 5, wherein said means for providing
two-way video and audio communication includes an Ethernet or Internet link between said
payment terminal and the monitoring facility.

7. The automated payment system according to claim 6, wherein said means for providing two-way video and audio communication includes an IP-addressable video camera.

8. The automated payment system according to claim 5, further comprising:
a processor at said payment terminal operable to control said means for assessing and said means for receiving; and
a data link between said processor and the monitoring facility to permit remote control of said processor.

9. The automated payment system according to claim 9, further comprising:
a central processor at said central monitoring facility connected to said processor at said payment terminal through said data link and controllable at said central monitoring facility to control said processor at said payment terminal.

10. An automated payment system for a facility, comprising:
an apparatus for calculating a payment amount;
an apparatus for receiving the payment amount;
a gate apparatus operable to control access to the facility in response to receipt of the payment amount; and
a two-way video and audio communication system linking the automated payment system with a monitoring facility remote from the automated payment facility.

11. The automated payment system according to claim 10, wherein said means for providing two-way video and audio communication includes an Ethernet or Internet link between said payment terminal and the monitoring facility.

12. The automated payment system according to claim 11, wherein said means for providing two-way video and audio communication includes an IP-addressable video camera.

13. The automated payment system according to claim 11, further comprising:
a processor operable to control said means for assessing and said means for receiving; and
a data link between said processor and the monitoring facility to permit remote control of said processor.

EVIDENCE APPENDIX

Nothing is included with this appendix.



RELATED PROCEEDINGS APPENDIX

Nothing is included with this appendix.

